Supreme Court, U. S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1491

PACIFIC LEGAL FOUNDATION AND PUBLIC LANDS COUNCIL, INC., *Petitioners,*

v.

NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.,

and

THOMAS KLEPPE, Secretary of The Interior, and CURTIS BERKLUND, Director of the Bureau of Land Management, *Respondents*

**Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit**

## PETITIONERS' REPLY MEMORANDUM

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1. Respondents argue that the petitioners Pacific Legal Foundation (PLF) and the Public Lands Council, Inc. (PLC) are not "aggrieved" by the judgments of the Courts below and therefore may not appeal those decisions. Br. in Opp. at 6-7. PLF and PLC are seri-

ously adversely affected and aggrieved by the judgments and are entitled to seek review of them.[1]

Contrary to the respondents' citation, Professor Moore recognizes the right of an aggrieved intervenor to appeal:

> The intervenor, once intervention has been allowed, has the right to appeal from all interlocutory and final orders which affect him, and from which an appeal is given by statute, whether the right under which he intervened was originally absolute or discretionary. 3B J. MOORE FEDERAL PRACTICE ¶ 24.15, at 24-566 (2d ed. 1974).

*See Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U.S. 275 (1946); *Securities & Exchange Com.* v. *United States R. & Imp. Co.*, 310 U.S. 434 (1940); *Norman's on the Waterfront, Inc.* v. *Wheatley*, 444 F.2d 1011 (3d Cir. 1971); and *Wolpe* v. *Poretsky*, 144 F.2d 505 (D.C. Cir. 1944), *cert. denied*, 323 U.S. 777 (1944).

Respondents' contention that PLF and PLC are not aggrieved by the District Court's judgment fails to recognize the statements by the Bureau of Land Management (BLM) in its Final Environmental Impact Statement (FEIS) that BLM's grazing management program will have the following adverse impacts:

(1) It will "disrupt traditional ways of livestock operations" (FEIS at III-34, III-35);

(2) there will be "removal or reduction in number of certain grazing permit holders" (*Id.*);

[1] The interests of PLF and PLC as representatives of the consuming public and the holders of livestock grazing permits, respectively, are set forth in Pet. for Cert. at 7.



(3) certain livestock owners may be "forced out of business" (*Id.* at V-3);

(4) "[a]n additional estimated $4,500 of private funds, primarily from range users, would be invested in each [Allotment Management Plan]" (*Id.* at I-10); and

(5) "during the period of implementation of the alternative of 'no grazing', there would be a definite depressive economic effect . . . and many individuals who are of older age would be permanently disenfranchised of their major source of income" (*Id.* at VIII-7).

Nor can there be any doubt as to the effect which an affirmation of judgment will have upon the consuming public (of which PLF is the representative here). Since fourteen percent of all livestock in the United States spend a portion of their lives on the public lands (Pet. for Cert. at 6), the reduction or elimination of this important source of forage (leaving no alternative in most cases) would have an extreme adverse inflationary impact upon consumers.

Moreover, the respondents overlook that portion of the District Court's judgment which tacitly approves BLM's plan to "phase out" 10 million acres of land currently used for grazing (Pet. App. at 78-79). Among the members, supporters, and contributers of PLF and PLC are persons currently holding grazing permits on portions of those lands. It is a certainty that those persons whose livelihoods are dependent on the use of those lands will be immediately and directly aggrieved by the loss of their grazing permits.

Further, the judgment of the District Court has already had a secondary though potentially more serious effect upon the petitioners. Although not ordered to do so by the District Court, the BLM, upon information and belief, has instituted a "freeze" upon all public lands range improvements pending completion of each of the 212 EIS's. Thus, those whose lands are not scheduled to be subjected to the EIS process for twelve years are faced with a most serious situation: their allotted lands may deteriorate before their eyes, yet they must sit helplessly with no remedy except the passage of time. Surely the destruction of one's livelihood accords one the right to appeal the decisions of those fomenting the destruction.

Finally, while injury to the petitioners is becoming a daily reality, NRDC is yet to demonstrate that they will suffer any but the most evanescent form of harm. Throughout this proceeding, NRDC has asserted a vague, inchoate interest in "the protection of the resources and environment of the Public Lands."[2] Yet, NRDC has never defined that interest with any degree of specificity. Of course, NRDC does assert a general interest in "recreational activities" such as "hunting, fishing, photography, and nature studies" on the public lands;[3] but such interests tend to pale somewhat alongside the interest of the petitioners in preserving their means of earning a livelihood—and the interest of the

[2] Br. for Plaintiff-Appellees at 51, in the United States Court of Appeals for the District of Columbia Circuit.

[3] *Id.* at 13.



public in continued access to protein sources at reasonable prices.[4]

2. The linchpin of respondents' argument is that the BLM "reached an agreed settlement of the case" (Br. in Opp. at 7). NRDC would have this Court ignore the fact that BLM undertook the negotiations with NRDC only after the District Court had declared its EIS policy in violation of NEPA and had *ordered* the negotiations to take place. A failure by BLM to negotiate in good faith could, of course, have resulted in the issuance of a contempt citation by the District Court. Instead, the BLM negotiated approximately four months and reached an accord with NRDC. To do otherwise would have been impossible under the circumstances.

The existence of this "agreement" and BLM's intended implementation thereof in no way avoids the issue presented for review by the Petition; namely, whether the District Court should in the first place have intervened with the agency's announced and partially implemented NEPA policy. It was that intervention which led to the negotiations and ultimately the "agreement." Is it that portion of decision which conflicts with the Sixth Circuit's *Natural Resources Def. Coun., Inc.* v. *Tennessee Val. Auth.*, 502 F.2d 852 (6th Cir. 1974). And it it that type of judicial intervention in

[4] In fact, the record below lacks any facts that would confer standing to sue on NRDC. NRDC has failed entirely to *demonstrate* injury (beyond mere allegations of such) and it has failed to prove that its membership, the membership of any of the other organizational plaintiffs, or the individual plaintiff requested that this suit be brought. In light of these facts, this Court may wish to inquire into the issue of the respondents' standing. In this regard, the cases of *Natural Resources Def. Coun.* v. *U.S. Envir. Pro. Agcy.*, 507 F.2d 905 (9th Cir. 1974), and *Warth* v. *Seldin*, 422 U.S. 490 (1975) are particularly relevant.

sound NEPA planning which is currently awaiting decision by this Court in *Kleppe* v. *Sierra Club,* No. 75-552, and *American Electric Power System* v. *Sierra Club,* No. 75-561.

3. Respondents have nowhere in their Opposition denied the importance and substantiality of the questions presented for review by the Petition. Rather, they attempt to raise and then destroy the specters of arguments not asserted by petitioners. They take great comfort in the "voluntary settlement" of the case by BLM, but overlook the fact that the negotiations were court ordered and the ultimate agreement court inspired and sanctioned.

NRDC's canards in no way serve to detract from the basic assertions in the Petition: that the judgment below is violative of decisions of this Court; that it conflicts with the applicable decisions of other Circuits; and that, if left undisturbed, it will render impossible the prudent management of millions of acres of the public lands and disrupt the lives of tens of thousands of citizens.

Respectfully submitted,

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May 26, 1976